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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,538	02/06/2004	Vincent L. Vaillancourt		6504

7590 05/22/2006

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EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/773,538	Applicant(s) VAILLANCOURT ET AL.	
	Examiner Catherine S. Williams	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☒ Claim(s) 4-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The objection to the drawings under 37 CFR 1.83(a) is withdrawn in light of the remarks dated 3/6/06.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wemmert et al (USPN 6,234,999). Wemmert discloses a needle hub, a needle housing (40) with an aperture and a film strip with a series of longitudinally spaced apertures with corrugation therebetween. See figures 2 and 5-6. See also 5:38-41; 3:49-52; 6:28-30; 6:46-50 and 6:60-62. A washer (49) with flaps (49a) is mounted in the needle housing.

Wemmert meets the claim limitations as described above but fails to include the strip being polyester film. At the time of the invention, it would have been obvious to use polyester as the material for the strip. Polyester is a known material in the art and is used extensively in the medical device art. Furthermore, one skilled in the art would know the properties of polyester, i.e. strength, durability, etc. One skilled in the art would have used common knowledge in the art of polyester and recognized its advantages. It would have been incorporated into Wemmert as the strip material for its durability thereby enhancing the performance of the device.

Allowable Subject Matter

Claims 4-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 3/6/06 have been fully considered but they are not persuasive. Applicant argues that it would not be obvious to use polyester as the material for the strip in Wemmert since Wemmert requires the tether to be made of a relatively stiff yet flexible material. Applicant also argues that element 49 does not read on the dictionary definition of a washer and; therefore, does not read on the limitation of a washer. However, certain polyester grades and blends can be relatively stiff yet flexible and element 49 is a flat thin ring.

Applicant has not provided that the use of polyester solves a problem, is used for a particular purpose or provides an advantage over other materials of art that could perform the function of stretching from a retracted position to an extended position to enable a housing to cover the needle tip. Furthermore, Wemmert discloses a device that has the same structure and function. Applicant states that Wemmert does not teach a strip that is stretched between the hub and the housing to retain the housing under a biasing force. However, the term stretched is broad and does not necessarily connote that the strip is under a tension force when the housing is covering the needle tip. The device of Wemmert meets the limitation of stretched in the fact that one must stretch the strip to enable the housing to cover the needle. Additionally, applicant

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seems to be alluding to the fact that polyester cannot be a relatively stiff yet flexible material. However, applicant's own invention, made of polyester, seems to be relatively stiff yet flexible. Additionally, USPNs 5,044,774; 4,631,932 and 4,434,512 all disclose polyester or polyester blends that are used in a relatively stiff yet flexible application. Clearly, polyester can be substituted for the PET strip in the Wemmert device and the device of Wemmert will still function as discloses. Finally, substitution of materials is commonly done in the medical art and is considered obvious unless there is some criticality or unexpected result for the substitution. Applicant has provided neither of these reasons in their disclosure.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

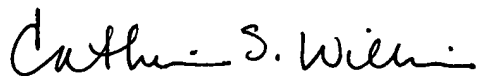
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571-272-4970. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine S. Williams
May 15, 2006